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HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO:5578 of 1995

DATED: -04-2006

Between:

Kommu David.

..... PETITIONER

AND

1. The State of Andhra Pradesh, rep.by its Principal Secretary to Government, Education Department, Secretariat Buildings, Saifabad, Hyderabad and 4 others.

.....RESPONDENTS

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ORDER:

Proceedings of the second respondent dated 02-06-1995, whereunder orders were passed, relying on the order of the Government in Memo No.668/P.S-1/95-3 dated 18-05-1995 and in view of the interim orders of this Court in W.P.M.P.No.6907 of 1995 in W.P.No.5578 of 1995 dated 27-03-1995, informing the petitioner that there were no grounds on which his case could be considered for reinstatement and payment of salary and that the same was rejected, is impugned in this writ petition as arbitrary and illegal.

2. Brief facts, to the extent necessary for this writ petition, are that the

petitioner was appointed in the 5th respondent school as a Secondary Grade Teacher on 18-06-1956. Petitioner would contend that the 5th respondent prevented him from attending school and discharging his duties from 13-06-1974 onwards, without issuing any order of termination. Petitioner's grievance initially was that, despite a report sent by the District Educational Officer, Prakasham District, vide proceedings in RC.No.1374/C2/85 dated 07-02-1995, the first and second respondents did not finalise action relating to his reinstatement. Pursuant to the interim orders of this Court, the impugned order dated 02-06-1995 was passed by the second respondent. The petitioner filed W.P.M.P.No.6239 of 1996 seeking amendment of the prayer to include a challenge to the proceedings dated 02-06-1995.

3. Aggrieved by the action of the 5th respondent, in not permitting him to join duty even after the school reopened on 13-06-1974, the petitioner filed W.P.No.2532 of 1975 before this Court questioning his unauthorized removal from service. This Court, by order dated 21-04-1976, dismissed the writ petition holding that the disputed questions of facts, which arose in the case, could not be decided in writ proceedings. The writ petition was dismissed leaving it open to the petitioner to have these issues decided either by the authorities of the Education Department, or if the petitioner was so advised, by filing a civil suit. Consequent upon dismissal of the writ petition, the petitioner filed O.S.No.24 of 1980 on the file of the Sub-Court, Markapur. The learned Sub-ordinate Judge, by judgment and decree dated 30-03-1981, dismissed the suit holding that the subject matter of the suit could not be agitated in a civil suit. The petitioner preferred an appeal to this Court in A.S.No.1630 of 1981 which also came to be dismissed, by a Division Bench, by order dated 17-06-1982. The special leave petition preferred against the said order was dismissed by the Supreme Court on 22-01-1985.

4 . Thereafter, the petitioner filed a detailed representation to the Government seeking its intervention. Entertaining the petitioner's representation the Government, vide proceedings dated 21-09-1989, directed the Director of School Education to enquire into the matter and send a compliance report. The Director of School Education in turn, vide its memo dated 16-10-1989, requested the Regional Joint Director of School Education, Guntur, to have an enquiry conducted into the matter. The Regional Joint Director of School Education, Guntur, in turn, entrusted the task of holding an enquiry to the District Educational Officer, Prakasham District, Ongole, who in turn directed the Deputy Educational Officer, Markapur, to hold an enquiry and to submit a detailed report. On 25-07-1990, the Deputy Educational Officer, Markapur, served notices on the petitioner and the management of the school to participate in the enquiry on 08-08-1990 in the school premises in order to ascertain the true and correct facts. On receipt of notices from the Deputy Educational Officer, the management of the 5th respondent school filed W.P.No.13319 of 1990, which was dismissed by order dated 17-09-1990 holding that it was open to the management to raise all these objections during the course of enquiry. W.A.No.1166 of 1990, preferred against the order in W.P.No.13319 of 1990, was also dismissed by order dated 01-08-1994. The enquiry was conducted on 07-11-1994 and a report was submitted by the enquiry officer holding that there was no misconduct on the part of the petitioner while working as a teacher in the 5th respondent-school, that no orders terminating his services had been passed, that due to personal differences between the petitioner and the correspondent of the school troubles had arisen and that the management had not taken any steps to call for any explanation from the petitioner, if it was considered that he had abstained from duty unauthorisedly. The District Educational Officer held that there was no truth in any of the allegations made by the management of the school against

the petitioner herein, that the petitioner was victimized by the correspondent of the school, that gross injustice had been done to him and that he should be ordered to be reinstated back to duty. The District Educational Officer was also of the view that since the petitioner was to attain the age of superannuation by 31-05-1995, appropriate orders reinstating him into service should be issued forthwith and that the State Government should also consider the issue of granting him salary and allowances for the period during which he was unauthorisedly kept out of office by the 5th respondent-school. The District Educational Officer, Ongole, vide proceedings in R.C.No.1374/C2/85 dated 07-02-1995, filed his report before the Director of School Education, Hyderabad. He also filed a copy of his report before the Regional Joint Director of School Education, Guntur. No action was taken by the Director of School Education, despite receipt of the report from the District Educational Officer in February, 1995. Petitioner would contend that, while the Director of School Education had the idea of reinstating the petitioner against any of the posts of Secondary Grade Teacher in a needy school, in view of the fact that the 5th respondent-school management had filled up the vacancy caused due to his termination, appointing another teacher by name Sri M.Pulla Reddy, the issue was not decided one way or the other.

5. As stated above, pursuant to the interim order of this Court, the impugned order dated 02-06-1995 was passed by the second respondent. Petitioner would contend that the proceedings, in R.C.No.404/B2-1/88 dated 02-06-1995, were issued under the purported orders of the Government in memo dated 18-05-1995, which proceedings were not communicated to the petitioner. Petitioner would contend that his claim for reinstatement and payment of salary was rejected on untenable grounds including that the incident had taken place 21 years ago. Petitioner would submit that he cannot be deprived of

reinstatement and payment of his salary on the ground of latches since he had been continuously pursuing one remedy after the other. Petitioner would submit that the other ground, of rejection of his claim for reinstatement, was that the Civil Court had examined witnesses produced by the management of the school who had given statements that the petitioner had not attended the school on 13-06-1974. Petitioner would contend that since the said suit in O.S.No.24 of 1980 was dismissed on the ground of lack of jurisdiction and that the petitioner ought to have established his allegations before the competent authority in view of Section 16 of the Andhra Pradesh Recognised Private Educational Institutions (Control) Act, 1975, any findings on other issues recorded by the Civil Court was null and void and could not form the basis for taking action against him. Petitioner would submit that an order or judgment, of a Court lacking jurisdiction, is null and void and since the impugned proceedings dated 02-06-1995 were based on the findings of the Civil Court, which did not have jurisdiction to try the suit, the impugned proceedings dated 02-06-1995 were also liable to be set aside. Petitioner would rely on the report of the Principal, District Educational Training Institute, Minampadu, Prakasham District, wherein it was held that there was no misconduct on his part. Petitioner would also rely on the proceedings of the Director of School Education dated 04-05-1995 wherein certain findings were recorded in his favour.

6. In the counter-affidavit, filed on behalf of the respondents, by the then Joint Director (Elementary Education), it is stated that the aided elementary school, Oddulavagupalli, had reopened after summer vacation on 13-06-1974 for the next academic year 1974-75, that the petitioner did not attend the school on the reopening day and subsequently from 13-06-1974 onwards and that this fact was confirmed by the Subordinate Judge, Markapur, in his judgment in O.S.No.24 of 1980 dated 30-03-1981. Reference is also made to W.P.No.2532 of 1975 which was dismissed by this Court on 21-04-1976 holding that disputed

questions of fact could not be adjudicated in writ proceedings. Respondents would also refer to O.S.No.24 of 1980 filed by the petitioner before the Subordinate Court, Markapur, which was also dismissed on 30-03-1981 holding that the Court had no jurisdiction to deal with departmental matters. The appeal preferred by the petitioner in A.S.No.1630 of 1981 also came to be dismissed by this Court in its judgment dated 17-06-1982 and the S.L.P. filed there against was also dismissed by the Supreme Court. Respondents would state that the petitioner had filed a representation on 13-04-1990 before the Government of Andhra Pradesh for redressal after loosing all his claims in various courts, that the Government in its D.O. letter dated 25-04-1990 had requested the Director of School Education to have the Regional Joint Director of School Education concerned enquire into the representation of the petitioner and submit a report to the Government. The Regional Joint Director was requested, vide proceedings dated 13-05-1990, to enquire into the matter and submit a report, who in turn requested the Deputy Educational Officer to enquire into the matter and submit a report. It is stated that, based on the report of the Regional Joint Director of School Education, the Deputy Educational Officer, Markapur, conducted an enquiry on the representation of the petitioner and submitted a preliminary enquiry report and since the Regional Joint Director, School Education, was not satisfied with the said preliminary report, he requested the District Educational Officer to enquire into the matter. Reference is made to W.P.No.13319 of 1990, filed by the 5th respondent school, which was dismissed by this Court by order dated 17-09-1990. Reference is also made to W.A.No.1166 of 1990 filed against the order passed in W.P.No.13319 of 1990 which also came to be dismissed by a Division Bench of this Court. It is stated that the District Educational Officer, appointed the Principal, D.I.E.T., Mynampadu, as the Enquiry Officer, that the principal conducted an enquiry on 07-11-1994 and that, as per his enquiry report, several officials of the school

including teachers were also examined. It is stated that the enquiry officer, in his report, had recorded the following:

1. "No evidences have been produced on the behaviour of Sri K.David, former, S.G.Assist. of A.U.P.School, Oddulavagupalli.

2. No evidence has been produced with reference to the removal of Sri K.David from Service.

3. It appears that due to misunderstandings between the two individuals viz., Sri K.David, S.G.Asst. and the manager of the School, these things happened.

4. There has been no evidence produced fully because the things relating to the enquiry pertains to very long back period.

5. No evidence has been produced with regard to the action taken by the management against Sri K.David for his absence in attending to the School."

This enquiry report was submitted to the government on 04-05-1995 with a request that necessary orders be issued in the matter. In the meanwhile this Court, by order in W.P.M.P.No.6907 of 1995 in W.P.No.5578 of 1995 dated 27-03-1995, directed the respondents to finalise the action relating to the petitioner's reinstatement. The government, in its memo dated 18-05-1995, while remitting the matter back to the Director of School Education requested that necessary orders be passed on the report of the District Educational Officer in his letter dated 07-02-1995 keeping in view the interim orders of this Court in W.P.M.P.No.6907 of 1995 in W.P.No.5578 of 1995 dated 27-03-1995. It is stated that in view of the orders of the government, in memo dated 18-05-1995, the case of the petitioner was carefully examined and it was observed that pursuant to the petitioner having absconded from service from 13-06-1974 the management of the school had appointed Sri U.Pulla Reddy in his place

from 17-11-1974 and that the department had also approved his appointment and was releasing salaries regularly. The Government, in its memo dated 18-05-1995, referred to the order of this Court in A.S.No.1630 of 1981 wherein it was observed that the witnesses produced by the management of the school had given statements before the trial Court that the petitioner had not attended school on 13-06-1974. Reference is also made to the finding recorded by this Court that the petitioner had not produced any evidence regarding his attending school on 13-06-1974 and that, on the representation of the petitioner on 14-06-1974, the Deputy Inspector of Schools had enquired into the matter and had informed that the petitioner had not attended the school on 13-06-1974 and subsequently. The appeal preferred by the petitioner in A.S.No.1630 of 1981 was dismissed by this Court. The government observed that since the petitioner had absconded from service and as Sri U.Pulla Reddy, appointed in his place by the Management, was continuing in service from 17-11-1974, the petitioner must be deemed to have been removed from service because of his continuous absconding from service and negligence in discharging his duties. The government observed that, after loosing cases in all Courts, the petitioner had approached the government seeking reinstatement of his service during 1990, that the incident had taken place 21 years ago between the management and the petitioner, that the department/Government was not responsible, that it was not appropriate to interfere in the case at this stage and that it was not possible to direct that the petitioner be reinstated in service. It is also stated in the Government memo that the question of payment of salaries by the department/Government did not arise, as there was no liability on the part of the department/Government. In view of the orders of the Government, in its memo dated 18-05-1995, and in view of the interim orders of this Court in W.P.M.P.No.6907 of 1995 in W.P.No.5578 of 1995 dated 27-03-1995, the petitioner was informed by the Director, in his proceedings dated 02-06-1995,

that there was no ground on which the case of the petitioner could be considered for reinstatement or for payment of salary, and hence, the same was rejected.

7. Sri K.G.Krishna Murthy, learned counsel for the petitioner, would refer to the provisions of the Andhra Pradesh Recognised Private Educational Institutions (Control) Act, 1975, (Act 11 of 1975), prior to its repeal by Section 101 (e) of the Andhra Pradesh Education Act, 1982, more particularly to Section 3 thereof, to contend that no teacher employed in any private Educational Institution could be dismissed, removed or reduced in rank or his service otherwise terminated except with the prior approval of the competent authority. Learned counsel would submit that this provision, under Act 11 of 1975, was analogous to Section 79 of the A.P. Education Act. Learned counsel would refer to the A.P. (Integrated) Educational Rules, 1966, issued in G.O.Ms.No.1188, Edn., dated 10-05-1966, more particularly to Rule 56 thereof, which relates to conditions of service of teachers under private managements. Under Rule 56 (iii), the management of the school has the power to terminate the services of any permanent teacher of the staff only as provided thereunder.

Rule 56 (iii) reads as under:

> "(iii) The management of a school shall have power to terminate the services of any permanent teacher of the staff only as provided hereunder
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> (a) Without notice for any or all of the following reasons viz, suspension, or cancellation of the certificate of the teacher under Rule 341 of Chapter VII of the Andhra Pradesh Educational Rules, declaration of the teacher as unfit to be a teacher by the issue of an order by the Director requiring the management of the school to dispense with the services of the teacher, conviction of the teacher by a Court of Law for an offence involving moral turpitude; and for proved insanity;
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> (b) With one month's salary in lieu thereof for any or all of the following reasons; viz, willful neglect of duty, serious

misconduct, gross insubordination, mental unfitness and physical unfitness:

Provided that in all cases falling under (a) and (b) above; the teacher shall be informed in writing of the action proposed to be taken by the management in the matter and shall be given a reasonable opportunity for stating his case in writing or in person and the statement made by him, if any, shall be taken into consideration before a final decision is taken by the management to issue a notice or to terminate the appointment;

Provided also that in all such cases the management shall, before issuing notice to the teacher and terminating his services, consult the Deputy Inspector of Schools concerned as regards the propriety of the proposed action and obtain his approval in writing;

(c) The same procedure as stated above shall be followed in the case of termination of service of the following categories of teachers also, i.e., teachers who are appointed on probation, and teachers who are appointed on probation, and teachers who are temporarily appointed for specified periods exceeding 3 months.

(d) No notice on either side is necessary is necessary when teachers are appointed purely on a temporary measure for three months or less in temporary vacancies.

(e) Notice is necessary when the management replaces unqualified teachers by qualified hands.

*Note :-*In the case of teachers in Telangana area, the rules applicable to permanently employed unqualified and untrained teachers in Government schools as on 1st November, 1956 shall apply to teachers under private management also.

(f) **In case where the action of the management in terminating the services of the teachers id declared unjustified by the District Educational Officer, the management should forthwith reinstate the removed teacher and in such cases, the management should also pay (if ordered by the District Educational Officer) the teacher the salary due for the period he was unemployed on account of irregular termination of services of the teacher by the management without claiming Government grant for the period**." (emphasis supplied)

Learned counsel would submit that even under the 1966 Rules, which were the

rules governing teachers in unaided schools or schools in private management when the petitioner's services were disengaged in 1974, the procedure prescribed under Rule 56 (iii) was required to be complied with and inasmuch as the said procedure had not been complied with, termination of the services of the petitioner, being contrary to the rules, was liable to be set side. Learned counsel would submit that Section 89 of the A.P.Education Act, 1982, provides for an appeal to the Director from the order of the District Educational Officer and under Section 90, the Government has the power, either *suo motu* or on an application from any person interested, to revise the order passed by any authority or officer in respect of any administrative or quasi-judicial decision or order. Learned counsel would submit that the petitioner had submitted a representation to the Government on 21-09-1989. He would contend that if the impugned order of the Director of School Education dated
02-06-1995 is to be treated as an order passed under Section 89 of the A.P. Education Act, the said order being a quasi-judicial order could not have been passed at the behest of the Government and since the recitals in the impugned order dated 02-06-1995 make it clear that the impugned order was passed on the basis of the earlier memo of the Government dated 18-05-1995, the impugned order dated 02-06-1995 is liable to be struck down on the ground that the appellate authority had abdicated his functions under Section 89 of the A.P.Education Act and had acted on the dictates of the Government. Learned counsel would submit that if, on the other hand, the power is to be traced to Section 90, the Government should then have passed an order on its own and not directed the Director of School Education to issue necessary orders on the report of the District Educational Officer. Learned counsel would contend that since the enquiry report of the Principal, DIET, and the findings recorded therein, were not considered by the government, its order in memo dated 18-05-1995 suffers from non-application of mind. Learned counsel would submit

that in either view of the matter, the impugned order dated 02-06-1995 is liable to be struck down.

8. With regards the conclusions reached by the Director of School Education, on the basis of the observations of this Court in A.S.No.1630 of 1981 to the effect that the petitioner had not attended School on 13-06-1974, learned counsel would contend that A.S.No.1630 of 1981 was an appeal preferred by the petitioner against the order of the Subordinate Court, Markapur, in O.S.No.24 of 1980, seeking reinstatement into service and since the Subordinate Court, by order dated 30-03-1981, had dismissed the suit holding that it did not have jurisdiction to adjudicate these issues, any observations made by the Subordinate Court in its judgment dated 30-03-1981 or by this Court in appeal in A.S.No.1630 of 1981, cannot be relied upon, since it is well settled that an order of a Court without jurisdiction is a nullity and any observations made therein are required to be ignored. Learned counsel would place reliance on **A.P.S.T.Employees Association v. A.P.Bhanjdev, Annamreddi Bodayya and another v. Lokanarapu Ramaswamy** and **Chandrakant Tukaram Nikam and others v. Municipal Corporation of Ahmedabad and another.**

9. Learned Government Pleader for Education, on the other hand, would seek to justify the order of the Director of School Education and contend that the Director had passed the order independently and not at the behest of the Government. Learned Government Pleader would submit that while the Subordinate Court, in O.S.No.24 of 1980, had dismissed the suit on the ground of lack of jurisdiction, the petitioner had chosen to prefer an appeal against the said order in A.S.No.1630 of 1981 and in as much as this Court had entertained the appeal and had passed orders thereon on merits, the findings recorded

therein, a judgment inter-parties, is binding on the petitioner. Learned Government Pleader would submit that since the appellate order is not one passed without jurisdiction, the findings recorded therein cannot be treated as a nullity. Learned Government Pleader would submit that while the order of the Subordinate Court, in O.S.No.24 of 1980, was confirmed by this Court in appeal in A.S.No.1630 of 1981, it was not on the ground of lack of jurisdiction but on merits, and the findings recorded by this Court, in its order in A.S.No.1630 of 1981, is binding on the petitioner. Learned Government Pleader would contend that since this Court had categorically held that the petitioner had abandoned service, such a finding was binding on the petitioner and 21 years after he had abandoned service, it was not open for him to contend that he should be reinstated into service and be paid salary for the entire duration from 13-06-1974 till date. Learned Government Pleader would further contend that, in any event, the Director of School Education and the Government were only exercising their statutory powers under Sections 89 and 90 of the A.P.Education Act and since the petitioner was admittedly working in a private school, the liability to pay his salary was only with that of the 5th respondent-school management and that the Government could not be mulcted with liability in this regard. Learned Government Pleader would submit that, after the petitioner's services had been disengaged, the 5th respondent-school had appointed one Sri U.Pulla Reddy in whose favour the Government had released grant-in-aid, and since grant-in-aid was being provided to the post in which the petitioner was hitherto employed, the Government, in any event, could not be directed to pay arrears of salary to the petitioner as that would amount to requiring the government to provide financial assistance to two persons for one aided post.

10. I am not inclined to non-suit the petitioner on the ground of laches. As

is clear from the averments referred to above, ever since 13-06-1974 when he was allegedly not permitted to join duty, the petitioner has been pursuing one remedy after the other. Initially he approached this Court by filing W.P.No.2532 of 1975. On the said writ petition being dismissed, the petitioner filed O.S.No.205 of 1977 before the Sub-Court, Ongole which, on transfer to the Sub-Court at Markapur, was re-numbered as O.S.No.24 of 1980. On the said suit being dismissed, the petitioner herein preferred an appeal in A.S.No.1630 of 1981 before this Court, and on the appeal being dismissed, special leave petition was filed before the Supreme Court. Soon after the special leave petition was dismissed, the petitioner started making representations to the Government, which resulted in an enquiry officer being appointed. The appointment of the said enquiry officer was challenged by the 5th respondent in W.P.No.13319 of 1990 which was dismissed on 17-09-1990. W.A.No.1166 of 1990 preferred thereagainst by the 5th respondent, also came to be dismissed by order dated 01-08-1994. Soon thereafter the impugned order dated 02-06-1995 came to be passed. As such the plea of laches is required to be rejected.

11. On the question as to whether the findings recorded by the trial Court in O.S.No.24 of 1980 and of the Division Bench of this Court in A.S.No.1630 of 1981 is binding on the petitioner herein, it is necessary to note the findings of the trial Court in its order in O.S.No.24 of 1980. The trial Court held that except for the evidence of the petitioner in respect of his attendance, there was no evidence to establish that he had attended the school on 13-06-1974, that he was prevented from signing the attendance register, that he had attended the school everyday upto 25-06-1974 and that he had also attended central classes o n 15-06-1974. The Sub-Court took note of the fact that the wife of the petitioner herein was also working in the school and she was also not examined in support of the plea that the petitioner had attended central classes on 15-06-

1974. The learned Subordinate Judge held that the petitioner had neither established his allegations of having attended the school on 13-06-1974 either by approaching the educational authorities nor was he successful in proving the same before it and his bare evidence that he was prevented from signing the attendance register in support of his presence could not be believed. The learned Judge, referred to Section 16 of the A.P. Recognised Private Educational Institutions (Control) Act, 1975, which provides that no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act required to be decided or dealt with by any authority or officer mentioned in the Act. Under Section 3 thereof, no teacher employed in any private educational institution shall be dismissed, removed or reduced in rank nor shall his employment be terminated except by the prior approval of the competent authority. The learned Subordinate Judge held that in view of Section 16 of the A.P.Recognised Private Educational Institutions (Control) Act, 1975, the Court had no jurisdiction and as such the plaintiff was not entitled for a declaration and the mandatory injunction as prayed for and that the subject matter could not be agitated in a civil suit.

12. Sri K.G.Krishnamurthy, learned counsel for the petitioner, would contend that inasmuch as the Civil Court had held that it had no jurisdiction to try the suit, any findings recorded by a Court, which lacks jurisdiction, is a nullity and is required to be ignored.

13. In **A.P.Bhanjdev**[1], a full bench of this Court held thus:

> "……It is axiomatic that a decree passed by a Court without jurisdiction is nullity. The same does not operate as *res judicata* nor does it bind the parties thereto or parties claiming through such a suit. A decree, which is nullity, does not confer any enforceable right. In KIRAN SINGH v. CHAMAN PASWAN (AIR 1954 SC 340) the apex Court observed:
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> …what the position in law is when a Court entertains a

> suit or an appeal over which it has no jurisdiction, and what the effect of section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties… (emphasis supplied)
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> The above judgment was referred in M.C.SETHI v. R.P.KAPOOR (AIR 1972 SC 2379 and A.R.ANULAY v. R.S.NAYAK (AIR 1988 SC 1531)"

14. In **Annamreddi Bodayya**[2]**,** the Supreme Court held thus:

> "……The High Court was in error in holding that the Civil Court had jurisdiction to entertain the suits. It may be noted that the law in this behalf has been set right apart from the decisions of this Court by the decisions of the larger beach of the same High Court If the trial Court had no jurisdiction to entertain the suits the first appellate Court was right in directing that the plaints be returned for presentation to the proper Court……"

Similar view was taken by the Supreme Court in **Chandrakant Tukaram Nikam**[3]**.**

15. The question as to whether an order passed by a Court which inherently lacks jurisdiction is a nullity, or whether it would remain in force, till a declaration in this regard is made by a competent Court, need not be gone into, since the petitioner himself preferred an appeal against the order of the Subordinate Court, Markapur, in O.S.No.24 of 1980 in A.S.No.1630 of 1981 before this Court. This Court entertained the appeal and dismissed it on merits and not on the ground that the civil Court lacked jurisdiction to try the suit. Having preferred an appeal against the order of the Subordinate Court, Markapur, having invited an order on merits and inasmuch as this Court did not

dismiss the appeal upholding the finding of the Subordinate Court that the Civil Court lacked jurisdiction, the finding recorded by this Court, in A.S.No.1630 of 1981, on the merits of the dispute, cannot be said to be a finding recorded by a Court which inherently lacks jurisdiction. The Division Bench of this Court, in A.S.No.1630 of 1981 dated 17-06-1982, held as under:

> "……Sri Veerabhadra Rao, the learned counsel for the appellant submits that the enquiry report submitted by D.W.6 cannot be relied upon at all as it is inadmissible as the enquiry was conducted without notice to the plaintiff, we think it is not necessary to go into this question. As already mentioned, the principal question that arises for consideration is whether on 13-06-1982 the plaintiff attended the school and whether subsequently also he discharged the duties by taking up the classes. The evidence of D.Ws.1, 2 and 3 clearly establishes that the plaintiff did not attend the school on 13-06-1974 and that subsequently also he did not take up classes. It is thus clear that he has absconded the service. Therefore, the finding of the trial Court on this issue cannot be assailed.
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> It must be remembered that this is a private school and it is open to the management to dispense with the services of a teacher for not attending the school. Further in this case somebody else also was appointed in the place of the plaintiff. No doubt, private schools are also governed by the Andhra Pradesh Recognised private Educational Institutions (Control) Act, 1972. Though Sri Veerabhadra Rao feebly contended that the provisions of the Act have not been complied with, but such a plea has not been taken at all. The learned counsel for the defendants, on the other hand, submits that this is a Minority Institution and by virtue of Article 30 (1) of the Constitution some of the provisions of the A.P.Recognised Private Educational Institutions (Control) Act cannot be made applicable as held by the Supreme Court in all Saints High School v. Government of Andhra Pradesh (AIR 1980 SC 1042). We need not go into this question in view of the fact that the plaintiff did not take such a plea viz., that the provisions of the Act are attracted. Had he taken such a plea, the defendants would have naturally come forward with the plea that Article 30 (1) of the Constitution is attracted. As a matter of fact, the record justified the defence contention that it is a minority institution. However, when there is no plea and no issue we

cannot permit the learned counsel for the plaintiff to take such a plea at this stage……."

16. I find considerable force in the contention of the learned Government Pleader that the findings recorded by the Division Bench of this Court, a judgment inter-parties, is binding on the petitioner herein and since the appeal was decided on merits and not on the ground that the Civil Court lacked jurisdiction to try the suit, the findings are binding on the petitioner and cannot be considered to be a nullity. The contention of the learned Government Pleader, that since the 5th respondent school, consequent to the petitioner not attending duty from 13-06-1974, had appointed another teacher by name Sri U. Pulla Reddy in his place which post was provided grant-in-aid, the Government could not be asked to provide aid to a single post twice over, merits acceptance. Whatever may be the dispute between the petitioner and the 5th respondent school with regards his termination or voluntary absence, the fact remains that the grant-in-aid, which the Government released, is in the nature of financial assistance. Having provided financial assistance to the said post held by Sri U. Pulla Reddy, which was earlier held by the petitioner herein, the Government cannot be mulcted with financial liability and be directed to pay arrears of salary even if the contention of the petitioner, that he was illegally terminated from service, were to be upheld.

17. It is also relevant to note that the Subordinate Judge, Markapur, in O.S.No.24 of 1980 had held that the Civil Court had no jurisdiction to try the suit in view of the embargo under Section 16 of the A.P.Recognised Private Educational Institutions (Control) Act, 1975, which Act came into force after 13-06-1974 when the petitioner is alleged to have abandoned service and even after Sri U.Pulla Reddy was appointed in his place on 17-11-1974. The question as to whether the provisions of the Act could have been made applicable to the petitioner has not been considered. Further under the second proviso of Rule

56 (iii) (b) and Rule 56 (iii) (f) of the A.P. (Integrated) Education Rules, 1966, issued in G.O.Ms.No.1188 dated 10-05-1966, before terminating the services of a teacher the school management is required to consult and obtain approval of the competent authority in writing and the consequences of approval not being granted is that the teacher is liable to be reinstated and salary paid for the period of his unemployment. The effect of these rules and its applicability to the petitioner herein has also not been considered either in the civil proceedings or in the writ proceedings to which both the petitioner and the school management were parties to.

18. Financial liability apart, the government, and the officials of the education department, have been entrusted with certain regulatory functions under the A.P. Education Act, and vested with quasi-judicial powers of deciding an appeal under Section 89 and revision under Section 90 of the Act. Under Section 89 an appeal lies to the Director of School Education and under Section 90 the Government has been conferred the power of revision. The impugned order dated 02-06-1995 is passed by the Director of School Education, and the power to pass orders in this regard can be traced only to Section 89 of the Act. It is well settled that a quasi-judicial power is required to be exercised independently and not at the behest or dictates of another authority, even if the said authority is superior in rank. A perusal of the impugned proceedings dated 02-06-1995 would clearly show that the second respondent had abdicated his statutory functions and had exercised his quasi-judicial power of an appellate authority at the dictates of the Government. Reference No.5, of the impugned proceedings dated 02-06-1995, is the government Memo dated 18-05-1995. The recital, in the impugned order dated 02-06-1995, reads as under:

> "…..After careful examination of the entire case of Sri K.David, Ex.Teacher, A.E.School, Oddulavagupalli, Prakasam Dist., **and in view of the orders of the Govt. issued in the**

> **reference 5th cited** and also in view of the interim orders of the Hon'ble High Court dt.27-03-1995 in W.P.M.P.No.6907 of 1995 in W.P.No.5578 of 1995, it is informed that there are no grounds on which the case of Sri K.David can be considered for his reinstatement and payment of salaries etc., and hence the same is rejected…." (emphasis supplied)

19. The impugned order dated 02-06-1995 was passed in view of the orders of the Government in Memo dated 18-05-1995 and, as stated above, the Government in its memo dated

18-05-1995 had held as under:

> "……When Sri David has lost his appeals in the courts, the D.E.O., Prakasam District would not have entertained the appeal of Sri David. **As the enquiry relates to an incident which took place about twenty one years back, the enquiry officer has also reported that a detailed evidences have not been produced. Having lost the court cases during 1980, Sri David again re-opened the case during 1990. The Dept., also would have rejected any representation of Sri David. As such there is no liability on the part of Department/Government to reinstate Sri David into service and payment of salaries.**
>
> **While intimating the above position, the D.S.E., may be requested to issue necessary orders on the report of the D.E.O., Prakasam District in Rc.No.1374/C2/85, dated 7-2-95."**
>
> (emphasis supplied)

20. Since the Government had, in effect, directed the Director of School Education to reject the appeal filed by the petitioner and, following the said Government memo, the second respondent had rejected the petitioner's representation, it is clear that the second respondent had abdicated his powers and had passed the impugned order at the dictates of the government.

21. The impugned order dated 02-06-1995 is, therefore, set aside and the second respondent is directed to consider the petitioner's representation on its merits, independent of the earlier orders of the Government, and pass orders

thereon in accordance with law within a period of three months from the date of receipt of a copy of this order.

21. The writ petition is disposed of accordingly. No order as to costs.

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April, 2006

SKM